

DEC 09 2010

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YAKIMA, WASHINGTON DEPUTY

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,)
)
Plaintiff,) No. CR-10-2077-RMP
)
vs.)
)
JAMES DEAN CLOUD,)
)
Defendant.) Plea Agreement
)

Plaintiff, United States of America, by and through Michael C. Ormsby, United States Attorney for the Eastern District of Washington, and James A. Goeke, Assistant United States Attorney for the Eastern District of Washington, and Defendant JAMES DEAN CLOUD and the Defendant's counsel, Alex B. Hernandez, III, agree to the following Plea Agreement:

1. Guilty Plea and Maximum Statutory Penalties:

The Defendant, JAMES DEAN CLOUD, agrees to plead guilty to the Superseding Information in this case charging the Defendant with: (1) a Crime on an Indian Reservation - Burglary, in violation of 18 U.S.C. § 1153 and R.C.W. 9A.52.025; and, (2) Possession of a Stolen Firearm, in violation of 18 U.S.C. § 922(j). The Defendant understands that each charge is a Class

1 C felony that carries a maximum penalty of not more than a 10-
2 year term of imprisonment; a fine not to exceed \$250,000; not
3 more than a 3-year term of supervised release; restitution; and a
4 \$100.00 special penalty assessment.

5 The Defendant, JAMES DEAN CLOUD, further understands that a
6 violation of a condition of supervised release carries an
7 additional penalty of re-imprisonment for all or part of the term
8 of supervised release without credit for time previously served
9 on post-release supervision.

10 The Defendant, JAMES DEAN CLOUD, further agrees and
11 understands that pursuant to Federal Rule of Criminal Procedure
12 11(c)(1)(C) the Defendant and the United States agree that the
13 Defendant shall receive a sentence of imprisonment of 120 months
14 imprisonment for his conviction for Count 1 of the Superseding
15 Information (a Crime on an Indian Reservation - Burglary, in
16 violation of 18 U.S.C. § 1153 and R.C.W. 9A.52.025) and a
17 sentence of 30 months incarceration for his conviction for Count
18 2 of the Superseding Information (Possession of a Stolen Firearm,
19 in violation of 18 U.S.C. § 922(j)). The Defendant and United
20 States agree pursuant to Federal Rule of Criminal Procedure
21 11(c)(1)(C) that these sentences shall run consecutively for a
22 total sentence of imprisonment of 150 months. The Defendant and
23 the United States further agree pursuant to Federal Rule of
24 Criminal Procedure 11(c)(1)(C) that as a condition of supervised
25 release, upon his release from custody, the Defendant shall enter
26 an inpatient substance abuse treatment program of 6 to 12 months
27 in duration in the manner directed by his United States Probation
28 Officer and the Court.

1 2. The Court is Not a Party to the Agreement:

2 The Court is not a party to this Plea Agreement and may
3 accept or reject this Plea Agreement. Sentencing is a matter
4 that is solely within the discretion of the Court. The Defendant
5 understands that the Court is under no obligation to accept any
6 recommendations made by the United States and/or by the
7 Defendant; that the Court will obtain an independent report and
8 sentencing recommendation from the U.S. Probation Office; and
9 that the Court may, in its discretion, impose any sentence it
10 deems appropriate up to the statutory maximums stated in this
11 Plea Agreement.

12 The Defendant acknowledges that no promises of any type have
13 been made to the Defendant with respect to the sentence the Court
14 will impose in this matter. The Defendant understands that the
15 Court is required to consider the applicable sentencing guideline
16 range, but may depart upward or downward under the appropriate
17 circumstances.

18 The Defendant also understands that should the sentencing
19 judge decide not to accept any of the parties' recommendations,
20 the provisions noted in Paragraph 10 of this Plea Agreement
21 pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C) apply.

22 3. Waiver of Constitutional Rights:

23 The Defendant, JAMES DEAN CLOUD, understands that by
24 entering this plea of guilty the Defendant is knowingly and
25 voluntarily waiving certain constitutional rights, including:

- 26 (a). The right to a jury trial;
27 (b). The right to see, hear and question the witnesses;
28 (c). The right to remain silent at trial;

1 (d). The right to testify at trial; and

2 (e). The right to compel witnesses to testify.

3 While the Defendant is waiving certain constitutional
4 rights, the Defendant understands the Defendant retains the right
5 to be assisted through the sentencing and any direct appeal of
6 the conviction and sentence by an attorney, who will be appointed
7 at no cost if the Defendant cannot afford to hire an attorney.
8 The Defendant also acknowledges that any pretrial motions
9 currently pending before the Court are waived.

10 4. Elements of the Offense:

11 The United States and the Defendant agree that in order to
12 convict the Defendant of a Crime on an Indian Reservation -
13 Burglary, in violation of 18 U.S.C. § 1153 and R.C.W. 9A.52.025,
14 the United States would have to prove beyond a reasonable doubt
15 the following elements:

16 (a). First, on or about May 25, 2010, in the Eastern
17 District of Washington, at White Swan, the
18 Defendant, JAMES DEAN CLOUD, did enter and remain
19 unlawfully in a dwelling other than a vehicle, to
20 wit: a residence located in White Swan,
21 Washington, with the intent to commit a crime
22 against property therein;

23 (b). Second, the dwelling was a place within the
24 external boundaries of the Yakama Nation
25 Reservation, on trust land and in Indian Country;
26 and,

27 (c). Third, JAMES DEAN CLOUD is an Indian.
28

1 The United States and the Defendant further agree that in
2 order to convict the Defendant of Possession of a Stolen Firearm,
3 in violation of 18 U.S.C. § 922(j), the United States would have
4 to prove beyond a reasonable doubt the following elements:

5 (a). First, on or about May 25, 2010, the Defendant
6 JAMES DEAN CLOUD knowingly possessed a stolen
7 firearm;

8 (b). Second, the firearm had been shipped or
9 transported from one state to another or from a
10 foreign nation to the United States; and,

11 (c). The Defendant knew that the firearm had been
12 stolen.

13 5. Factual Basis and Statement of Facts:

14 The United States and the Defendant stipulate and agree that
15 the following facts are accurate; that the United States could
16 prove these facts beyond a reasonable doubt at trial; and these
17 facts constitute an adequate factual basis for JAMES DEAN CLOUD's
18 guilty plea:

19 On May 25, 2010, Yakima County Sheriff's deputies responded
20 to a residential home alarm alert in White Swan, within the
21 Yakama Nation Reservation. Officers contacted the homeowner who
22 advised that two handguns and other items had been stolen from
23 the residence while the homeowner was away. The home was
24 equipped with internal video surveillance. Review of the video
25 surveillance plainly depicts JAMES DEAN CLOUD walking through the
26 house and picking up various items on May 25, 2010. Among the
27 items CLOUD discovered and stole from the residence were two
28 handguns. The video surveillance clearly shows CLOUD examine the

1 firearms, secure the firearms on his person, and depart the
2 residence. One firearm was a Glock Model 19 handgun, serial
3 number BCM577, and the other firearm was .38 caliber Taurus
4 revolver with an unknown serial number. Both firearms were
5 manufactured outside the State of Washington and traveled in
6 interstate and/or foreign commerce to reach the State of
7 Washington. CLOUD is an enrolled member of the Yakama Nation.
8 CLOUD did not have permission to enter and remain in the
9 residence on May 25, 2010.

10 This statement of facts does not preclude either party from
11 presenting and arguing, for sentencing purposes, additional facts
12 which are relevant to the guideline computation or sentencing,
13 unless otherwise prohibited in this agreement.

14 6. Waiver of Inadmissibility of Statements:

15 The Defendant agrees to waive the inadmissibility of
16 statements made in the course of plea discussions with the United
17 States, pursuant to Fed. R. Crim. P. 11(f). This waiver shall
18 apply if the Defendant withdraws this guilty plea or breaches
19 this Plea Agreement. The Defendant acknowledges that any
20 statements made by the Defendant to law enforcement agents in the
21 course of plea discussions in this case would be admissible
22 against the Defendant in the United States's case-in-chief if the
23 Defendant were to withdraw or breach this Plea Agreement.

24 7. The United States Agrees:

25 (a.) Not to File Additional Charges:

26 The United States Attorney's Office for the Eastern District
27 of Washington agrees not to bring any additional charges against
28 the Defendant based upon information in its possession at the

1 time of this Plea Agreement and arising out of Defendant's
2 conduct involving illegal activity charged in this Superseding
3 Information, unless the Defendant breaches this Plea Agreement
4 any time before or after sentencing.

5 8. United States Sentencing Guideline Calculations:

6 The Defendant understands and acknowledges that the United
7 States Sentencing Guidelines (hereinafter "U.S.S.G.") are
8 applicable to this case and that the Court will determine the
9 Defendant's applicable sentencing guideline range at the time of
10 sentencing.

11 (a.) Base Offense Level:

12 The United States and the Defendant understand that the
13 Court will determine a base offense level under the U.S.S.G. The
14 parties are free to advocate for whatever base offense level
15 either party believe is appropriate under the U.S.S.G.

16 (b.) Specific Offense Characteristics:

17 The United States and the Defendant understand that the
18 Court will consider additional specific offense characteristics
19 under the U.S.S.G. that could reduce or increase the base offense
20 level.

21 (c.) Acceptance of Responsibility:

22 If the Defendant pleads guilty and demonstrates a
23 recognition and an affirmative acceptance of personal
24 responsibility for the criminal conduct; provides complete and
25 accurate information during the sentencing process; does not
26 commit any obstructive conduct; accepts this Plea Agreement; and
27 provides written notification that he intends to enter a plea of
28 guilty no later than December 9, 2010, the United States will

1 move for a three (3) level downward adjustment in the offense
2 level for the Defendant's timely acceptance of responsibility,
3 pursuant to U.S.S.G. §3E1.1(a) and (b).

4 The Defendant and the United States agree that the United
5 States may at its option and upon written notice to the
6 Defendant, not recommend a three (3) level downward reduction for
7 acceptance of responsibility if, prior to the imposition of
8 sentence, the Defendant is charged or convicted of any criminal
9 offense whatsoever or if the Defendant tests positive for any
10 controlled substance.

11 Furthermore, the Defendant agrees to pay the \$100 mandatory
12 special penalty assessment for each count of conviction to the
13 Clerk of Court for the Eastern District of Washington, at or
14 before sentencing, and shall provide a receipt from the Clerk to
15 the United States before sentencing as proof of this payment, as
16 a condition to this recommendation by the United States.

17 (d.) Criminal History:

18 The United States and the Defendant understand that the
19 Defendant's criminal history computation is tentative and that
20 ultimately the Defendant's criminal history category will be
21 determined by the Court after review of the Presentence
22 Investigative Report. The United States and the Defendant have
23 made no agreement and make no representations as to the criminal
24 history category, which shall be determined after the Presentence
25 Investigative Report is completed.

26 As of this date, the facts regarding the Defendant's
27 criminal history are related in the Pretrial Services Report
28 previously provided to the parties in this matter.

1 9. Departures:

2 The parties are unaware of any applicable departures and
3 note that this Plea Agreement is pursuant to Federal Rule of
4 Criminal Procedure 11(c)(1)(C).

5 10. Incarceration:

6 (a.) Length of Imprisonment:

7 The Defendant, JAMES DEAN CLOUD, agrees and understands that
8 pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C), the
9 Defendant shall receive a total sentence of imprisonment of 150
10 months. Specifically, pursuant to Federal Rule of Criminal
11 Procedure 11(c)(1)(C), for his conviction for Count 1 of the
12 Superseding Information (a Crime on an Indian Reservation -
13 Burglary, in violation of 18 U.S.C. § 1153 and R.C.W. 9A.52.025),
14 the Defendant agrees he shall receive a sentence of 120 months
15 incarceration and for his conviction for Count 2 of the
16 Superseding Information (Possession of a Stolen Firearm, in
17 violation of 18 U.S.C. § 922(j)) the Defendant shall receive a
18 sentence of 30 months incarceration. The Defendant further
19 agrees pursuant to Federal Rule of Criminal Procedure
20 11(c)(1)(C) that these sentences of incarceration shall run
21 consecutively to one another, resulting in a total sentence of
22 incarceration of 150 months.

23 If the Court does not accept the plea, does not accept this
24 Plea Agreement, or chooses to sentence the Defendant to a greater
25 or lesser sentence than the United States and the Defendant have
26 agreed upon, the Defendant may withdraw his plea and withdraw
27 from the Plea Agreement. The United States also at its option
28 may withdraw from this Plea Agreement if the Court imposes a

1 total sentence of incarceration less than 150 months and/or does
2 not impose inpatient substance abuse treatment for a period of 6
3 to 12 months to follow the Defendant's sentence of incarceration
4 as a condition of the Defendant's term of three years supervised
5 release. This Plea Agreement is also contingent on the Defendant
6 executing the Plea Agreement and filing a formal notice with
7 Court of his intent to enter a guilty plea no later than December
8 9, 2010.

9 (b.) Bureau of Prison Recommendations:

10 The United States Attorney's Office for the Eastern District
11 of Washington acknowledges that the Defendant may intend to
12 request the Court to write a letter to the United States Bureau
13 of Prisons recommending that the Defendant be allowed to serve
14 the sentence at a specific institution. The Defendant
15 understands that any decision concerning the Defendant's place of
16 incarceration is within the exclusive province of the Bureau of
17 Prisons.

18 11. Criminal Fine:

19 The United States and the Defendant are free to make
20 whatever recommendation concerning the imposition of a criminal
21 fine that they believe is appropriate.

22 12. Supervised Release:

23 Pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C),
24 the United States and the Defendant agree that the Court shall
25 impose a 3 year term of supervised release to include the
26 following special conditions, in addition to the standard
27 conditions of supervised release:
28

1 (1) that the Defendant participate and complete such drug
2 testing and drug treatment programs as the Probation Officer
3 directs, including mandatory participation in an inpatient
4 substance abuse treatment program for a period of at least 6 to
5 12 months, with the duration of the inpatient treatment program
6 within the term of 6 to 12 months to be set by the Probation
7 Officer and the Court; and

8 (2) that the Defendant's person, residence, office, vehicle,
9 and belongings are subject to search at the direction of the
10 Probation Officer.

11 13. Mandatory Special Penalty Assessment:

12 The Defendant agrees to pay the \$100 mandatory special
13 penalty assessment to the Clerk of Court for the Eastern District
14 of Washington, at or before sentencing, pursuant to 18 U.S.C. §
15 3013 and shall provide a receipt from the Clerk to the United
16 States before sentencing as proof of this payment.

17 14. Payments While Incarcerated:

18 If the Defendant lacks the financial resources to pay the
19 monetary obligations imposed by the Court, the Defendant agrees
20 to earn the money to pay toward these obligations by
21 participating in the Bureau of Prisons' Inmate Financial
22 Responsibility Program.

23 15. Restitution:

24 Both parties understand that restitution may be ordered.
25 The parties have no agreement on the amount of restitution and
26 understand that the victims of this offense will be heard by the
27 Court on this issue. The Defendant reserves the right to object
28 to restitution amounts if appropriate.

1 16. Additional Violations of Law Can Void Plea Agreement:

2 The Defendant and the United States agree that the United
3 States may at its option and upon written notice to the
4 Defendant, withdraw from this Plea Agreement or modify its
5 recommendation for sentence if, prior to the imposition of
6 sentence, the Defendant is charged or convicted of any criminal
7 offense whatsoever or if the Defendant tests positive for any
8 controlled substance.

9 17. Appeal Rights:

10 The Defendant understands that he has a limited right to
11 appeal or challenge the conviction and sentence imposed by the
12 Court. The Defendant hereby expressly waives his right to appeal
13 his conviction and the sentence the Court imposes, including any
14 restitution order. Defendant further expressly waives his right
15 to file any post-conviction motion attacking his conviction and
16 sentence, including a motion pursuant to 28 U.S.C. § 2255, except
17 one based upon ineffective assistance of counsel based on
18 information not now known by Defendant and which, in the exercise
19 of due diligence, could not be known by Defendant by the time the
20 Court imposes the sentence. The Defendant also retains the
21 limited right to appeal any sentence of incarceration imposed in
22 excess of a total of 150 months.

23 18. Integration Clause:

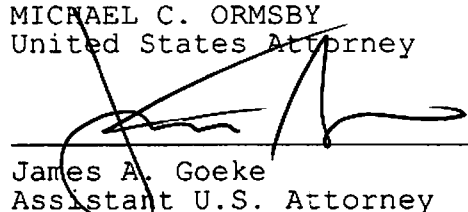
24 The United States and the Defendant acknowledge that this
25 document constitutes the entire Plea Agreement between the United
26 States and the Defendant, and no other promises, agreements, or
27 conditions exist between the United States and the Defendant
28 concerning the resolution of the case. This Plea Agreement is

1 binding only upon the United States Attorney's Office for the
2 Eastern District of Washington, and cannot bind other federal,
3 state or local authorities. The United States and the Defendant
4 agree that this agreement cannot be modified except in a writing
5 that is signed by the United States and the Defendant.

6
7 Approvals and Signatures

8 Agreed and submitted on behalf of the United States
9 Attorney's Office for the Eastern District of Washington.

10 MICHAEL C. ORMSBY
11 United States Attorney

12 
13 _____
14 James A. Goeke
Assistant U.S. Attorney

12/09/2010
Date

15 I have read this Plea Agreement and have carefully reviewed
16 and discussed every part of the agreement with my attorney. I
17 understand and voluntarily enter into this Plea Agreement.
18 Furthermore, I have consulted with my attorney about my rights, I
19 understand those rights, and I am satisfied with the
20 representation of my attorney in this case. No other promises or
21 inducements have been made to me, other than those contained in
22 this Plea Agreement and no one has threatened or forced me in any

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

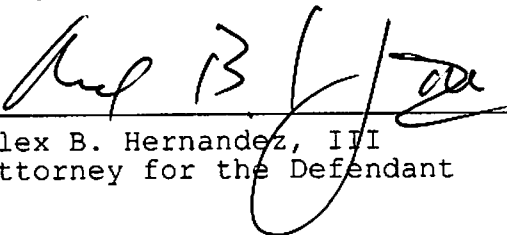
1 way to enter into this Plea Agreement. I am agreeing to plead
2 guilty because I am guilty.

3 
4 _____
5 JAMES DEAN CLOUD
6 Defendant

12-8-10

Date

7 I have read the Plea Agreement and have discussed the
8 contents of the agreement with my client. The Plea Agreement
9 accurately and completely sets forth the entirety of the
10 agreement between the parties. I concur in my client's decision
11 to plead guilty as set forth in the Plea Agreement. There is no
12 legal reason why the Court should not accept the Defendant's plea
13 of guilty.

14 
15 _____
16 Alex B. Hernandez, III
17 Attorney for the Defendant

12-8-10

Date